Question. 3.

Answer.

(a) → ~~A~~ offence that A committed in terms of the facts are very serious. which involves Rape & murder. as a result his (A)'s defence may not stand in court.

→ Under -S- 40(1)(b) of CPA. a police officer can make a arrest without having a warrant in cases where the officer is of a view that the suspect committed a Schedule 1 offence. (Rape & murder) by virtue of believing that A committed such offence. the arrest would be supported by S- 40. as lawful.

(b) → Rape and Murder are very serious offence, Schedule 1 offences. The police in cases relating to ~~these~~ Schedule 1 offence would be justified to arrest a suspect without serving summons because of the seriousness of the offences they committed

(c) → In terms of the facts, A was arrested in connection of schedule 1 offences ~~(namely)~~ Namely Rape & murder, which means

Question 9

Answer

(b) The correct term for A's application is Discharge of the accused at the end of the state case.

→ S-174 states that at the conclusion of the case and the prosecution is expected to

→ S-174 of CPA - States that if the Court considers that there's no enough evidence that the accused has committed an offence against him. or other offences that he may be charged with. at conclusion of the case., the Court may return a verdict of not guilty.

→ The Court will therefore apply the test as referred in the Shumpy case. at Close of the case. to determine whether the state presented enough evidence which proves A is connected to crime.
→

Question 04

Answers

→ In terms of S-57 the DPP or a prosecutor with a written permission from the DPP may grant an accused bail before they can appear in ~~court~~. court. The DPP must ~~to~~ consult with the investigating officer before granting such Bail.

→ The bail applies in cases where only schedule 07 were committed.

→ An accused may be released on prosecutorial Bail provided.

a) They pay Bail money, or provide a guarantee that will pay the money. $

b) Agree to the terms & conditions made by the DPP. or the prosecutor

c) By paying the money & ~~making~~ making a promise to pay the money and accept to follow the conditions.

Question 9

Answers:

(a) → By not being a magistrate, he is acting in a incorrect manner as the presiding officer.
→ In terms of criminal proceedings it is expected that a presiding officer only observes the proceeding and also act neutral or unbiased.
→ Re-Examination is conducted by a party that invited the witness, it would be the prosecutor, as in the facts. who is required to conduct a Re-Examining of C, the witness.
→ The role of the ~~presiding officer~~ ~~court~~ magistrate. in Re-Examination proceedings is to ask questions to make unclear facts clearified. e.t.c But it would be an injustice for the magistrate to act as if he is helping or against a particular party.
→ S-35 of the Constitution protects the accused right to a fair trial. The Re-examination of witnesses by a magistrate may infrange on the right of accused to fair trial as provided by S-35 of RSA Constitution.

Question 8

Answer:

~~In terms of S 163 (1) (d)~~

In terms of S - 162, where its required that a witness make an oath, he/she may do so under this section. However in terms of

→ S - 163, (1) (d) where a witness is not willing or objects to take an oath.

→ The court shall allow the witness to make an affirmation.

→ And as result make use of the specific words " In Lieu of the Oath and the direction of the presiding officer :-

1. I affirm solemnly, that the evidence I will submit will be the truth.

2. That the affirmation must have legal effect same as that of a person who makes an oath.

→ The Court can therefore apply S - 163 in order to allow C, or get C' to make a testimony. without making an oath but affirmation instead.

Question 6.

→ In terms of S-106 of the CPA: An accused may only plea to the charges against them that:-
a) He/she is guilty of the offence or
b) That she/he is not guilty. and e.t.c.
→ According to the set of facts, a plea made by B. "No contest" cannot be recognised., B cannot make such plea as it is not a correct plea in terms of S-106. during ~~crim~~ criminal proceedings.
→ In cases where an accused makes a plea that is not recognised by the court, the presiding officer usually ~~has~~ records a plea of not guilty or take their pleas as "not guilty" plea.
→ The plea of "No contest" is not valid in terms of CPA S-106. and therefore, B's plea is incorrect.

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~~Q6~~ Question 7.

Answer.

~~According to set of facts.~~

-> The correct terms for the remand which was made in this matter is an adjournment of the proceedings.
-> In terms of cases where a trial has already started and the accused has already made a plea. and the witness was also invited to participate by the prosecution. before they moving to hear the matter another date. by court (TO add) Also evidence was submitted.
-> This would therefore be an ~~ad~~ adjournment as a result.

-> A ~~postponed~~ postponement usually occurs the accused can make a plea or the court starts with the trial.

-> In terms of the facts, A made a plea, and the prosecution has called B as a witness, testimony was submitted, hence this remand will constitute to an adjournment & not a postponement.

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Answers

Question 01

→ In terms of S- 50 (1) (d) of CPA, a person arrested has to be taken to court as soon as possible, and The period should not be above 48 hours after arrest has been made.

→ for the fact that A was arrested on monday and was taken to court after the 48 hours period of ~~48~~ hours at 14H00 after he was arrest at 10H00 on monday., this means he was supposed to appear at 10H00 on wednesday and not after that hour. (14H00)

→ As a result the requirement on the ~~48~~ 48 hour rule as provided in S- 50 (1) (d) of CPA was not complied with. as the 48 hours lapsed before A was taken to appear at court.

Question 10.

Answer

→ A's court action is a review and not an Appeal.

→ This is because A alledges that M was interfering with his right to cross examine the witness.

→ Reviews are applied concerning the fairness and correctness of procedure during the proceedings and also focuses on whether the magistrate or a Judge made an irregularity in period of trial.

→ Appeals ideally are applied in cases where an accused ~~wishes~~ or prosecutor/state wishes to appeal because of the correctness of the sentence or judgement made, but not the facts of the case

Question - 3 Continuation.

(c) → which gives the police legal rights to arrest the suspect without violating his constitutional right as provided in S-12 of the constitution..

→ A's rights such as S-12 of the constitution would be limited, This is due to the fact that the police complied with S-40 CPA. and had reasonable grounds ~~to suspe of~~ believing that A committed Rape and murder. Hence A's rights would have not been infringed by the officers's arrest. or the manner in which the arrest was made.

Question 2.

~~Answer~~ Answer:

1. The High Court has Jurisdiction to hear matters relating to rape. The High Court has an inherent jurisdiction to hear matters ~~relat~~ of any kind, and which have been committed with in its region. and
2. Regional magistrate Court.
It as provided for in the S- 92 (2) of the magistrate courts Act.
- The Regional court has jurisdiction to hear matters or cases that relate to murder & rape.